

ESTTA Tracking number: **ESTTA564934**

Filing date: **10/15/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Beachbody, LLC
Granted to Date of previous extension	10/13/2013
Address	3301 Exposition Blvd.Third Floor Santa Monica, CA 90404 UNITED STATES

Attorney information	Camille M. Miller Cozen O'Connor 1900 Market StreetThird Floor Philadelphia, PA 19103 UNITED STATES cmiller@cozen.com, efeatherman@cozen.com, hdiamond@cozen.com, cbranka@cozen.com
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Applicant Information

Application No	85769769	Publication date	04/16/2013
Opposition Filing Date	10/15/2013	Opposition Period Ends	10/13/2013
Applicants	<p>Asokaraj, Veeramani 78 Stacey Road Marlborough, MA 01752 UNITED STATES</p> <p>Asokaraj, Surainder 78 Stacey Road Marlborough, MA 01752 UNITED STATES</p> <p>Asokaraj, Subitha 78 Stacey Road Marlborough, MA 01752 UNITED STATES</p> <p>Asokaraj, Nithila 78 Stacey Road Marlborough, MA 01752 UNITED STATES</p>		

Goods/Services Affected by Opposition

Class 018. First Use: 2012/10/30 First Use In Commerce: 2012/10/30
All goods and services in the class are opposed, namely: All purpose sport bags; All-purpose athletic

bags; All-purpose carrying bags; Backpacks; Book bags; Gym bags; School bags; Shoulder bags; Travel bags
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3444723	Application Date	10/08/2007
Registration Date	06/10/2008	Foreign Priority Date	NONE
Word Mark	P90X		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2003/02/18 First Use In Commerce: 2003/02/18 pre-recorded video tapes, cassettes, DVDs, and CDs, featuring exercise, fitness and dietary information and instruction		

U.S. Registration No.	3812145	Application Date	08/31/2009
Registration Date	06/29/2010	Foreign Priority Date	NONE
Word Mark	P90X		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2003/07/21 First Use In Commerce: 2003/07/21 shirts, t-shirts, golf shirts, jackets, wind resistant jackets, sweat shirts, sweat pants, running suits, socks, shorts, caps and hats		

U.S. Registration No.	3837950	Application Date	03/01/2010
Registration Date	08/24/2010	Foreign Priority Date	NONE
Word Mark	P90X		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2004/01/09 First Use In Commerce: 2004/01/09 Exercise equipment, namely, machines, chin-up bars, benches, trampolines, chest pulls, chest expanders, abdominal boards, rowing machines, weights, bars, stretch bands, pulleys, work out weighted gloves, pushup stands, power stands in the nature of exercise platforms, exercise balls, medicine balls, personal exercise mats, yoga blocks		

U.S. Registration No.	3041368	Application Date	11/22/2004
Registration Date	01/10/2006	Foreign Priority Date	NONE

Word Mark	BEACHBODY
Design Mark	
Description of Mark	NONE
Goods/Services	Class 018. First use: First Use: 2004/08/23 First Use In Commerce: 2004/08/23 backpacks Class 025. First use: First Use: 2004/08/23 First Use In Commerce: 2004/08/23 clothing, namely shirts and tops

Attachments	Notice of Opposition re PPX.PDF(383256 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Camille M. Miller/
Name	Camille M. Miller
Date	10/15/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<hr/>		:	Opposition No.
BEACHBODY, LLC,		:	Serial No. 85/769,769
		:	
	Opposer,	:	
		:	Filed: November 2, 2012
v.		:	Published: April 16, 2013
		:	
NITHILA ASOKARAJ		:	
SUBITHA ASOKARAJ		:	Mark: PPX
SURINDER ASOKARAJ		:	
VEERAMANI ASOKARAJ		:	
		:	
		:	
	Applicants.	:	
		:	
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NOTICE OF OPPOSITION

Beachbody, LLC, a Delaware limited liability company, with a place of business at 3301 Exposition Blvd., 3rd Floor, Santa Monica, CA 90404, believes that it will be damaged by registration of the mark PPX, which is the subject of application Serial No. 85/769,769, published in the April 16, 2013 *Official Gazette*, and hereby opposes the same.

As grounds of opposition, it is alleged that:

PARTIES

1. Opposer, Beachbody LLC, ("Opposer") is a Delaware limited liability company, with a mailing address of 3301 Exposition Blvd., 3rd Floor, Santa Monica, California 90404.
2. Applicants, Nithila Asokaraj, Subitha Asokaraj, Surainder Asokaraj and Veeramani Asokaraj ("Applicants"), are individuals, all with a mailing address of 78 Stacey Road Marlborough, Massachusetts 01752.

BACKGROUND REGARDING OPPOSER AND OPPOSER'S MARK

3. Opposer Beachbody is a well-known creator and seller of in-home fitness, health,

wellness and weight loss solutions, including different in-home exercise and fitness DVD-based workout kits, fitness gear including backpacks and bags, and supplement products. One of the main components of Opposer's business encompasses the development, production, sale and distribution of its BEACHBODY® line of health, wellness, weight loss and fitness products and service, including its popular in-home fitness DVDs and kits such as P90X®, P90X2®, INSANITY® and INSANITY THE ASYLUM® VOLS. 1 and 2.

4. Opposer has a strong presence in the fitness industry as a leading provider of exercise and fitness instruction, exercise, health and nutrition goods and services since 1998. Its BEACHBODY® line of health, wellness, weight loss and fitness products and service has achieved great success since 1998.

5. The P90X® workout is a revolutionary system of 12 sweat-inducing, muscle-pumping workouts, designed by Tony Horton to transform the body from regular to ripped in just 90 days. The P90X® workout features a number of different body weight and resistance training exercises, and cardio formats including plyometrics and the martial art of kenpo to build a lean, strong physique, burn fat, shrink waistlines, and chisel six packs. It uses an advanced training technique called "Muscle Confusion," a form of cross-training which accelerates the results process by constantly introducing new moves and routines so the user's body never plateaus, and the user never gets bored.

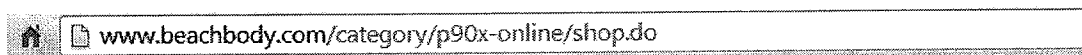
6. The P90X2® workout is the sequel to Opposer's best-selling workout program, P90X®. With P90X2® workout, P90X® graduates can get even stronger, more flexible, and more ripped. The P90X2® program is designed for maximum intensity and efficiency to push users harder and deeper to improve one's cardio endurance, speed, coordination, agility and power.

7. Opposer's well-known P90X® exercise and fitness videos, DVDs, and kits have

achieved great success since their introduction on February 18, 2003. In fact, the P90X® and P90X2® exercise and fitness videos, DVDs and kits are so popular that Beachbody is planning to launch P90X3™ workout program, which is another sequel, in the very near future.

8. Due to the popularity of the P90X® program, Opposer also has a line of P90X® fitness gear including backpack and bags, apparel, nutritional supplements and other goods and products.

9. The P90X® products, including the P90X® backpack and other bags, can be purchased from Opposer's websites. In fact, Beachbody has a dedicated P90X® Store on its flagship website to promote its P90X® line of fitness programs, apparel, supplements, bags, fitness gear and its P90X® Newsletters. Screenshots of the P90X® Store, including clothing, backpacks, bags and fitness gear, at Beachbody.com are shown below. The P90X® Store is accessible at <http://www.beachbody.com/category/p90x-online/shop.do>.



ALL PRODUCTS

P90X® Peak Performance Protein Bars

★★★★☆ 3.7 of 5 (91 reviews)

Try indulgent Chocolate Fudge, delicious Café Mocha, creamy

P90X2®

★★★★☆ 4.3 of 5 (121 reviews)

Train off-balance to build the body of an athlete. Using a breakthrough in sports science called Muscle

Tony Horton's 10-Minute Trainer®

★★★★☆ 4.2 of 5 (406 reviews)

Get the body you want in less time with Tony's power-packed total-body

P90X® Tees-Women



Quality
3.9

Durability
4.1

Read all 10 reviews Write a review

You'll get ripped, but your T-shirt won't! These 100 percent cotton T-shirts are designed to withstand the extreme training regimen you're going to put them through. With the P90X logo on the front and "Bring It" on the back, you'll look and feel great while you work out.

» View larger

Women's sizes: Small (30-32), Medium (32-34), and Large (36-38). Available in Black and Grey.

Tell a friend

https://teambeachbodytools.com/gear/bags/p90x/p90xr-backpack.html

TEAM BEACHBODY®

My Account My Cart Checkout Log In
Need Help? Call us M-F 9am-5pm CST 1-877-562-1885

Home Business Cards Signage Apparel Sharing Tools Gear Accessories Vintage Clearance Oct. Promo

Home / Gear / Bags / P90X / P90X Backpack

P90X Backpack

Email to a Friend

Availability: In stock

Regular Price: \$64.00
SPECIAL PRICE: \$45.00
YOU SAVE: \$19.00 (30%)

Qty: 1 ADD TO CART

Quick Overview

Heavy-duty construction lets this bag take years of use and abuse. 300 denier x 900 denier rhinoksin polyester/ 600 denier polyester. Double-lined entry pack. Internal padded laptop sleeve. Integrated shoulder harness with neoprene grab handle. Fleece-lined top drop-in audio pocket with headphone exit port. Side mesh water bottle pockets. Dual-side compression straps.

SKU: 8511-700-055

Double click on above image to view full picture

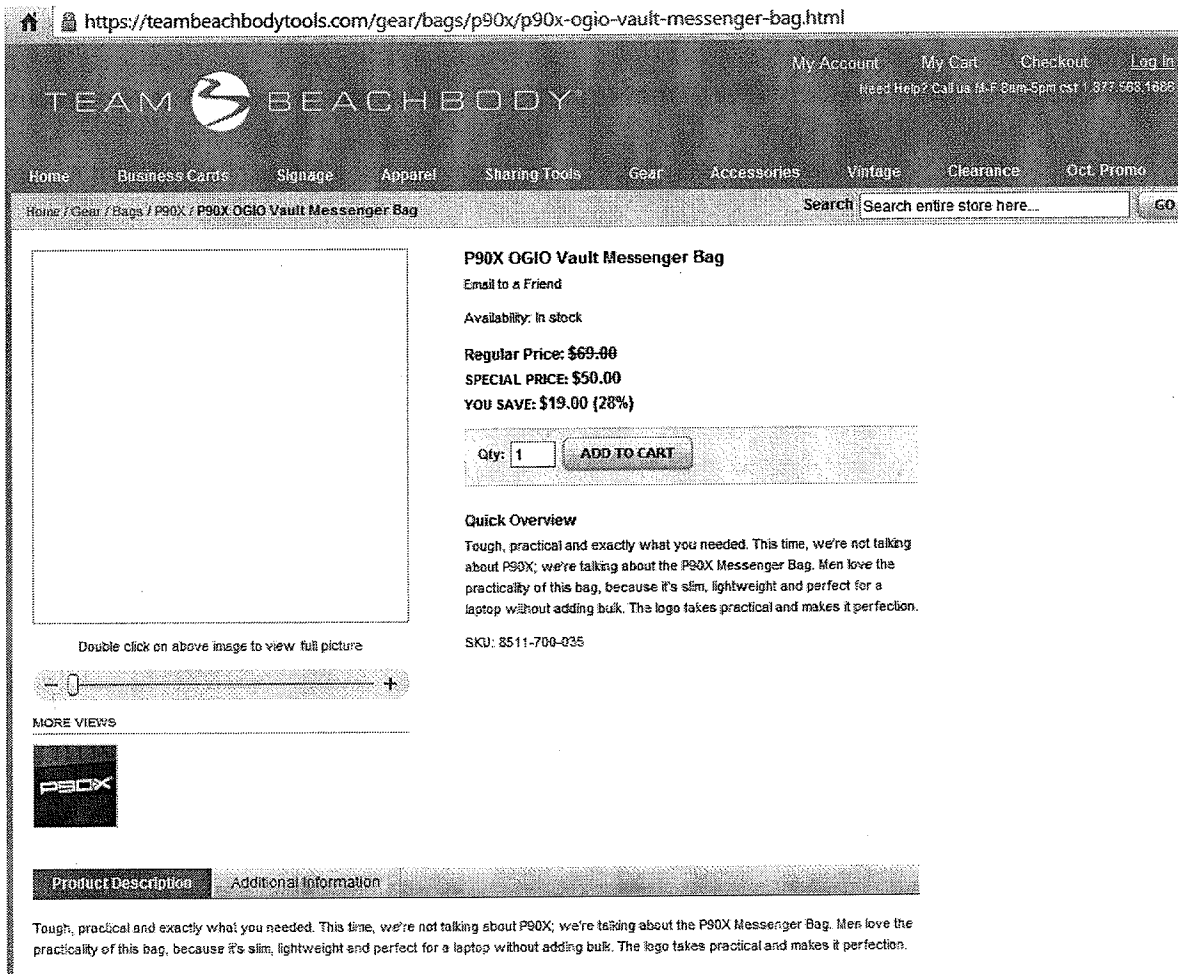
Product Description Additional Information

Black with White Embroidered Logo

Heavy-duty construction lets this bag take years of use and abuse. 300 denier x 900 denier rhinoksin polyester/ 600 denier polyester. Double-lined entry pack. Internal padded laptop sleeve. Integrated shoulder harness with neoprene grab handle. Fleece-lined top drop-in audio pocket with headphone exit port. Side mesh water bottle pockets. Dual-side compression straps.

Laptop sleeve: 12.5" h x 10.25" w x 2.5" d; fits most 15" laptops. Dimensions: 19" h x 12" w x 10" d Capacity: 2,050 cu. in./33.6L Weight: 2.0 lbs./0.9kg.

This is perfect to carry your gear to the gym or to use to hold your business building tools, laptop, business cards, brochures etc. .



10. Opposer's P90X® in-home fitness kits and products include exercise DVDs, instructional fitness and diet guides and fitness gears. Opposer also sells P90X® clothing, backpacks, bags and accessories at its websites as shown in the screenshots above, and are accessible at <https://teambeachbodytools.com/gear/bags/p90x/p90x-ogio-vault-messenger-bag.html>, <https://teambeachbodytools.com/gear/p90xr-backpack.html> and http://www.beachbody.com/category/p90x-online/shop_gear.do.

11. Opposer first introduced the P90X® in-home fitness kits, fitness gears, bags, apparel and related products at least as early as February 18, 2003. This date significantly precedes Applicants' alleged date of first use of the trademark application for PPX in March 2012.

12. On October 8, 2007, Opposer filed an application for registration of the mark P90X in the United States Patent and Trademark Office on the Principal Register under the Lanham Act, 15 U.S.C. § 1051 et seq. This application was assigned Serial No. 77/298,721 and covers the use of this mark in conjunction with “pre-recorded video tapes, cassettes, DVDs, and CDs, featuring exercise, fitness and dietary information and instruction” in Int. Class 9. The date of first use is February 18, 2003. The Patent and Trademark Office issued Registration No. 3,444,723 on June 10, 2008. Further, the Patent and Trademark Office approved Opposer’s §§ 8 and 15 affidavits on June 27, 2013. Thus, Registration No. 3,444,723 is incontestable and conclusively presumed valid and enforceable.

13. On August 31, 2009, Opposer filed an application for registration of the mark P90X in the United States Patent and Trademark Office on the Principal Register under the Lanham Act, 15 U.S.C. § 1051 et seq. This application was assigned Serial No. 77/816,178 and covers the use of this mark in conjunction with “shirts, t-shirts, golf shirts, jackets, wind resistant jackets, sweat shirts, sweat pants, running suits, socks, shorts, caps and hats” in Int. Class 25. The date of first use is at least as early as July 21, 2003. The Patent and Trademark Office issued Registration No. 3,812,145 on June 29, 2010.

14. On March 1, 2010, Opposer filed an application for registration of the mark P90X in the United States Patent and Trademark Office on the Principal Register under the Lanham Act, 15 U.S.C. § 1051 et seq. This application was assigned Serial No. 77/947,432 and covers the use of this mark in conjunction with “exercise equipment, namely, machines, chin-up bars, benches, trampolines, chest pulls, chest expanders, abdominal boards, rowing machines, weights, bars, stretch bands, pulleys, work out weighted gloves, pushup stands, power stands in the nature of exercise platforms, exercise balls, medicine balls, personal exercise mats, yoga blocks” in Int. Class 28. The date of first use is at least as early as January 9, 2004. The Patent and Trademark

Office issued Registration No. 3,837,950 on August 24, 2010.

15. On November 22, 2004, Opposer filed an application for registration of the mark BEACHBODY in the United States Patent and Trademark Office on the Principal Register under the Lanham Act, 15 U.S.C. § 1051 et seq. This application was assigned Serial No. 78/520,853 and covers the use of this mark in conjunction with “backpacks” in Int. Class 18 and “clothing, namely shirts and tops” in Int. Class 25. The date of first use is at least as early as August 23, 2004. The Patent and Trademark Office issued Registration No. 3,041,368 on January 10, 2006. Further, the Patent and Trademark Office approved Opposer’s §§ 8 and 15 affidavits on January 29, 2011. Thus, Registration No. 3,041,368 is incontestable and conclusively presumed valid and enforceable.

16. Opposer’s P90X® mark has become well-known throughout the health, wellness and fitness industry. Through the use of Opposer’s P90X® mark, Opposer has developed an excellent reputation for the BEACHBODY® line of fitness products, including the P90X® in-home fitness kits, clothing, fitness gears, backpacks, bags and other fitness, health and wellness products and services.

17. The great success of the Opposer’s P90X® in-home fitness kits, backpack, bags, fitness gears and other products and services, is due in part to Opposer’s marketing and promotional efforts. Opposer has spent a substantial amount of time and money advertising and promoting its P90X® mark. These efforts include significant advertising and promotion of its products and services through Opposer’s websites, including its company websites, its dedicated P90X® Store on Opposer’s Beachbody.com website, its many Facebook company and product pages as well as substantial print and other internet-based advertising, in-person and televised promotional appearances by its trainers, and its infomercials, among other efforts.

18. Opposer’s P90X® Facebook page is liked by over 670,000 Facebook users. A

screenshot of the Facebook page, accessible at <https://www.facebook.com/P90X> is shown below:



19. Opposer's P90X® infomercials are regularly featured on YouTube, on television, and in many social media platforms. In fact, Electronic Retailing Association (ERA), the leading trade association for direct-to-consumer commerce, awarded Opposer for its P90X® infomercial with the ERA Moxie Awards, which represent the best in television, radio, online and mobile direct response marketing, in the Best Long Form of the Year, Over \$250K category in 2010. Two of the P90X infomercials, namely, "P90X: The Reason" and "P90X: The Proof," received the Telly Award in 2011 and 2009, respectively.

20. The market success of Opposer's fitness products and services offered under the P90X® mark has been extraordinary, and the relevant public has come to rely upon and recognized Opposer's products and services by the P90X® mark. As a result, Opposer's P90X® mark has substantial goodwill associated therewith.

21. Opposer has vigorously defended Opposer's P90X® mark against infringers and

potential infringers.

22. Opposer's P90X® mark is inherently distinctive and represents the exceedingly valuable goodwill of Opposer's fitness, health and wellness related goods and services.

BACKGROUND REGARDING APPLICANTS AND APPLICANTS' MARK

23. On November 2, 2012, Applicants filed an application for PPX in connection with "All purpose sport bags; All-purpose athletic bags; All-purpose carrying bags; Backpacks; Book bags; Gym bags; School bags; Shoulder bags; Travel bags" in International Class 18. The application was accorded Serial No. 85/769,769. The alleged date of first use is October 30, 2012. The application is currently pending.

24. Applicants claim a date of first use of the PPX mark on June 27, 2012.

25. Applicants provided a specimen consisting a photograph of a backpack with the PPX designation on the front of the backpack.

26. Applicants' channel of trade is unknown.

27. Applicants' PPX mark was published in the *Official Gazette* on April 16, 2013.

28. Opposer filed a ninety-day request for an extension of time on May 7, 2013 and a further sixty-day request for an extension of time on August 13, 2013, thereby granting Opposer until October 15, 2013 to file its Notice of Opposition.

LIKELIHOOD OF CONFUSION PURSUANT TO SECTION 2(D) OF THE LANHAM ACT

29. Opposer's P90X® mark and Applicants' PPX mark are similar in sound, appearance, and meaning. The marks create the same commercial impression and are confusingly similar.

30. Applicants' PPX mark consisting of the letters P, P and X is likely to increase any consumer confusion, as it creates an association between Applicants' use of PPX for "all purpose

sport bags; all-purpose athletic bags, all-purpose carrying bags; backpack; book bags; gym bags; school bags; shoulder bags; travel bags” and Opposer’s P90X® backpack and other bags, Opposer’s P90X® workout programs, clothing, fitness gear and supplements. The combination, therefore, is likely to cause consumers to associate Applicants’ PPX mark with Opposer and its P90X® mark and results in a greater degree of consumer confusion.

31. The customer base of Applicants’ PPX bags and backpacks and Opposer’s P90X® bags, backpacks, workout programs, fitness kits, fitness gear, apparel, supplements and other fitness related goods and services are similar, if not identical.

32. If Applicants are permitted to register its mark, and, thereby, obtain the *prima facie* exclusive right to use Applicants’ PPX mark in the marketplace, confusion is likely to result, and Opposer will be damaged thereby.

33. Applicants’ use of Applicants’ PPX mark in connection with “all purpose sport bags; all-purpose athletic bags, all-purpose carrying bags; backpack; book bags; gym bags; school bags; shoulder bags; travel bags” is likely to cause confusion or mistake or to deceive, within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

34. Allowance of Applicants’ application and registration of the PPX mark would restrict and impair Opposer’s right to use, develop and expand its use of its P90X® mark, and would otherwise cause injury and damage to Opposer’s P90X® mark, as well as its goodwill and reputation.

DILUTION PURSUANT TO SECTION 43(C) OF THE LANHAM ACT

35. Beachbody’s P90X® mark is famous.

36. Applicants’ PPX application was filed on November 2, 2012, which is after Beachbody’s P90X® mark became famous.

37. Applicants allegedly first used the PPX mark on June 27, 2012, which is after Beachbody's P90X® mark became famous.

38. Applicants' alleged use of PPX dilutes the distinctive quality of Beachbody's P90X® mark.

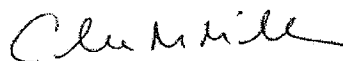
39. Applicants intend to trade on Beachbody's reputation and/or to cause dilution of Beachbody's P90X® mark.

40. Applicants' use of Applicants' PPX mark in connection with "all purpose sport bags; all-purpose athletic bags, all-purpose carrying bags; backpack; book bags; gym bags; school bags; shoulder bags; travel bags" is likely to dilute the goodwill associated with Beachbody's P90X® mark, within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

41. Allowance of Applicants' application and registration of Applicants' PPX mark would result in damage and injury to Beachbody, who has expended considerable sums and resources in promoting and developing its P90X® mark.

WHEREFORE, Opposer prays that allowance of Serial No. 85/769,769 be refused and that this Opposition be sustained.

Respectfully submitted,



Date: October 15, 2013

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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing Notice of Opposition to be served via e-mail and First Class Mail, postage pre-paid to counsel for Applicants:

DANIEL N. SMITH
NEW ENGLAND PATENT & TRADEMARK
1 SALEM GRN STE 405
SALEM, MA 01970-3790

/Elizabeth Featherman/

Elizabeth Featherman

Date: October 15, 2013